

Remarks

In the Advisory Action of May 20, 2008, the Examiner disagreed with the positions taken by Applicant in the Communication filed on May 5, 2008. It is apparent from the Examiner's remarks that there is a ***fundamental*** misunderstanding of the claimed invention as it relates to Caro '109. Applicant claims an invention wherein ***the player's entry (i.e., player indicia) for the instant-win game is not dependent upon or a function of the player's entry for the base wagering game.*** Caro '109 teaches the exact opposite.

Claim 1 calls for "receiving a base wagering game entry from a player... comprising a first set of player selected or randomly generated game indicia." Thus, it is important to understand, that the first set of game indicia is the player's indicia or "player-selected numbers", which the player may expressly designate or have randomly generated in a "quick-pick" option. With respect to the instant-win game component, claim 1 calls for "the instant win game being independent from the base wagering game entry such that the instant win game ***is not dependent upon or a function of the first set of game indicia.***" Thus, the instant win game is not dependent on the player's first set of game indicia. Independent claims 14 and 18 contain similar limitations.

With respect to the above cited limitations, the Examiner stated in the Advisory Action:

As stated clearly on page 4 of Car, in paragraph 0048 and 0049, Caro clearly teaches of having two sets of independent numbers which are used to play bonus game and future lottery game respectively. The only relationship those numbers have between them is that they might have been coincidentally selected by the Random number generator. As seen in figure 2A, the element #26 are the numbers, produced randomly by a RNG (Random number generator) for the instant win game and element #30 are the numbers for the lottery game, and clearly they are independent of each other.

The numbers referred to by the Examiner in the above cited passage and discussed in par. 0048 ***are not the player-selected numbers (corresponding to the first set of game indicia in claim 1)***, but are the sets of randomly generated numbers used by the lottery in the different games (against which the player-selected numbers are compared to determine a winning event). The Examiner is correct in that these sets are independent of each other, ***but they are not the player-selected numbers and do not correspond to the player's first set of game indicia of the present claims.*** In fact, as described in detail in Applicant's last Amendment, the very purpose of Caro '109 ***is to use the same set of player-selected numbers to play an instant game and a future game, which is exactly opposite to the present claims.*** Caro '109 states a "problem known in the prior art" is that previous attempts to combine a future draw game and an instant game:

(3) **do not allow the same player-selected numbers, whether selected "directly" by the player or through the use of a "quick pick" to be played in both the future lottery games and the instant game**

(Caro '109, ¶ 0012.) Caro '109 explains that using the same entry in both games allows the player to have **"multiple play opportunities with his or her selected set of numbers."** (Caro '109, ¶ 0022.) Caro '109 states the purpose for using the same entry for both games is that:

With the same player-selected set of numbers, **play is therefore extended, and play value of the game is increased.**

(Caro '109, ¶ 0049.)

Accordingly, Caro '109 is completely dependent upon the player's selection of numbers for the base wagering game and the instant-win game, and does not satisfy the relevant limitations of the present independent claims 1, 14, and 18.

With respect to the "theme game" limitations of the independent claims, the Examiner stated in the Advisory Action:

The reference of Caro teaches of having different theme games, as noted in paragraph 0041 on page 4, (e.g., scores of sport event, stock prices), and the reference Mullins teach of having different themes between the instant game and the lottery game, thus the combination of Caro and Mullins would allow for having themes that are different in the instant win game from lottery game.

With all due respect, par. 0041 of Caro '109 does not stand for the proposition cited by the Examiner. The cited paragraph ***merely describes methods or devices of random number generation*** that may be used by the lottery to generate the game numbers, and has no relevance to any type of game theme. There is no requirement or suggestion in Caro '109 that the way in which the numbers are randomly generated is reflected as a "theme" for any type of game. Each and every embodiment of a lottery ticket in Caro '109 includes ***a single game theme*** related to the instant-win game and the future draw game, such as Pick-3, Pick-4, or Lotto. There is no theme distinction between the two types of game reflected on the lottery ticket. In fact, the appearance or "theme" of the lottery tickets does not change if the player opts not to play the instant game (compare Figs. 2A and 2B).

On the other hand, Mullins '293 describes an instant-win game component of a two-part lottery ticket wherein the theme of the instant-win game is purposefully hidden from the player and is not revealed until the player actually plays the instant game, as described in greater detail in Applicant's last Amendment. It is respectfully submitted

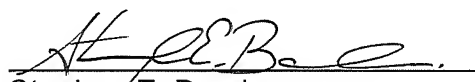
that there is no logical combination of Mullins '293 and Caro '109 that would result in the presently claimed combinations. The theme for the future draw game and the instant win game in Caro are the same, and the same set of player-selected indicia is used in both games. The theme does not change depending on whether the player opts in or out of the instant-win game. It is not conceivable as to how one skilled in the art would glean from Mullins '293 a reason to completely reconfigure the games of Caro '109 to display a theme for the instant win game that is different from a theme for the future draw game.

Accordingly, the Examiner is respectfully requested to reconsider the outstanding rejection of the pending claims in view of this communication and Applicant's prior communication of May 5, 2008. Applicant respectfully submits that the present application is in complete condition for allowance. Should any issues remain after consideration of this amendment, then the Examiner is invited and encouraged to telephone the undersigned. If any fee not accounted for above is required for entry of this Amendment or papers filed herewith, authorization is hereby granted to charge such fee to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

By:


Stephen E. Bondura
Registration No.: 35,070

P.O. Box 1449
Greenville, SC 29602-1449
(864) 271-1592
Fax (864) 233-7342